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SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-576

PHILIP A. ROBINSON, JACOB A. ROBINSON and KATE ROBINSON,

Petitioners,

vs.

DR. LLOYD W. McCORKLE, Commissioner, Individually and as Head of the Department of Institutions and Agencies; DR. RUFUS R. LITTLE, Individually and as Superintendent of Bergen Pines County Hospital; BERGEN PINES COUNTY HOSPITAL; RALPH W. CHANDLESS, Borough Attorney; HARRY H. CHANDLESS, JR., Municipal Magistrate; JOHN KAPHON, Clerk, Municipal Court; ARTHUR H. VAN HOUTEN, Chief of Police; CAPT. WILLIAM D. NOONAN; SGT. HOWARD R. BAKER, JR.; SGT. EUGENE F. DATES; SGT. GIRARD K. DOMMENGE; PTL. PETER A. BRUINOOGE; PTL. BRUCE H. WERNER; SGT. HARRY P. CARTY, JR.; PTL. DONALD E. WORSTER; PTL. WILLIAM H. BISCHOFF; Ex-Chief HARRY P. CARTY, SR.; Ex-PTL. JOHN W. RUROEDE, JR., Individually and as Police Officers,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

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A brief in opposition to the petition for certiorari submitted by Bergen Pines County Hospital and Dr. Rufus R. Little has been received by us on November 3, 1972. The only reply required of the petitioners is to refute the statements found on page 6 of their brief, where they submit "Reason(s) for Denying Writ of Certiorari" following the same numbering as petition, under "Reasons for Granting the Writ of Certiorari."

Say the respondents:

> "1. This argument, as is true of petitioner's points 2 and 3, was not presented to the Courts below and is without merit. The opinions of the Courts below do not intimate reliance on affidavits."

Our reply:

1. In his opinion, the district judge stated (see 14a of petition):

> "The Court has had the benefit of oral argument and more than a dozen briefs and affidavits have been submitted by all parties."

Again, on 20a appears this observation by the same judge:

> "I have carefully considered the affidavits of the above-named defendant policemen, etc."

There were no affidavits submitted with the motion to dismiss. Therefore, the only affidavits the Court could have considered were the spent affidavits accompanying motion for injunction.

Hence, respondents' point 1, true also of points 2 and 3, is without merit.

Say the respondents:

> "4. . . . Further the motion to dismiss did not constitute a motion for summary judgment, but a motion pursuant to Rule 12b attacking the jurisdictional requisites and the sufficiency of the allegations of the complaint."

Our reply:

4. The moving papers did not indicate under what rule respondents were moving. The trial judge in letter opinion dated December 14, 1970, 13a, without indicating under what rule he was deciding the motions, merely stated:

> "This matter is presently before the Court on defendants' various motions to dismiss the complaint. . . ."

Nowheres in the remainder of that opinion is there any mention of the rule under which he was dismissing.

Say the respondents:

> "8. Petitioner misconstrues the holdings of the Courts below. See also No. 4 above."

Our reply:

In affirming the erroneous opinion of the district court judge, the opinion of the United States Court of Appeals for the Third Circuit stated, at 6a:

> ". . . The trial judge properly treated the designated motions as motions to dismiss, and measured the allegations of the complaint against the *rule of specificity* of pleading applicable to civil rights actions." (Emphasis ours)

Again, no mention of any Rule of Civil Procedure under which the district judge or the judges of the Court of Appeals were acting—no citation of any cases.

Rule 1 of the Federal Rules of Civil Procedure for the United States District Courts provides:

> ". . . They shall be construed to secure the just, speedy and inexpensive determination of every action."

Civil rights actions are not excepted. Before the adoption of Rule 8(a)(2) of these Rules, critics of the "short and plain statement," among them the Ninth Circuit, wanted the complaint to state more detail which would send pleading back to the old code requirements. See 13 FRD 253. The Advisory Committee rejected the efforts of these critics and of the Ninth Circuit, which had proposed, following the word "statement," "which statement shall contain the facts constituting the cause of action." Special exceptions were urged upon the Committee, such as for antitrust, patent, copyright or other allegedly special types of litigation. They met with the same fate. The only permissible exception made, however, was in Rule 71A dealing with Condemnation of Property where sub. (c)(2) "Contents" sets out specifically what is being claimed and against whom.

The Committee, adopted the "Fair Notice" philosophy of pleading as articulated in *Conley* v. *Gibson* (1957) 355 U.S. 41, 47, where Mr. Justice Black speaking for an unanimous Court, held:

> ". . . the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the

> claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. The illustrative forms appended to the Rules plainly demonstrate this."

The Rule of "Specificity" so strongly urged by the district judge when dismissing the complaint and adopted by the Court of Appeals when affirming the dismissal, has been superseded by Rule 8(a)(2), the "short and plain" statement rule. Now the detailed information about a claim or defense is never given by pleadings, but is available to the parties by the use of deposition and discovery procedure. "Specificity" in pleading, with all deference to the courts urging it, is now dead. See Moore's Federal Practice Rules Pamphlet, District Courts, as amended 1971, p. 404, et seq.

Say the respondents:

> "11. Even plaintiff agreed in his argument below that a county hospital cannot be sued under Section 1983 unless equitable relief is sought."

Our reply:

11. Not so. Our brief to the Third Circuit is to the contrary. On p. 20 we stated:

> "Our own United States District Court in *Porcelli* v. *Titus* (D.C. N.J. 1969) 302 F. Supp. 726, has held that a Board of Education was amenable as a 'person' under Section 1983. In an opinion by Chief Judge Angelli, he held that the Newark Board of

Education is a body corporate which may sue and be sued. N.J.S. 18A:10-1, 18A:11-2."

Respectfully submitted,

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